



STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

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FRANK J. KELLEY, Attorney General  
for the State of Michigan, FRANK J.  
KELLEY, ex rel MICHIGAN NATURAL  
RESOURCES COMMISSION, MICHIGAN  
WATER RESOURCES COMMISSION and  
HOWARD A. TANNER, Director of  
the Michigan Department of  
Natural Resources,

Plaintiffs,

Case No. 79-929-190-CE

-VS-

CHEMICAL RECOVERY SYSTEMS, INC.,  
a Michigan corporation, M.S. & N.  
CORPORATION, a Michigan Corporation,  
NOLWOOD CHEMICAL CORPORATION, a  
Michigan corporation, EDWARD W.  
LAWRENCE, A Michigan Resident,  
A. H. MAGNUS, JR., a Michigan  
Resident, ARTHUR B. McWOOD, JR.,  
a Michigan Resident, CHARLES H.  
NOLTON, a Michigan Resident,  
and PETER J. SHAGENA, a Michigan  
Resident,

Defendants.

ANSWER TO COMPLAINT  
AND  
AFFIRMATIVE DEFENSES

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Defendants, CHEMICAL RECOVERY SYSTEMS, INC., a Michigan corporation, M. S. & N. CORPORATION, a Michigan corporation, NOLWOOD CHEMICAL CORPORATION, a Michigan corporation, A. H. MAGNUS, JR., a Michigan Resident, ARTHUR B. McWOOD, JR., a Michigan Resident, CHARLES H. NOLTON, a Michigan Resident, and PETER J. SHAGENA, a Michigan Resident, by and through their attorneys, MURPHY, BURNS & McINERNEY, P.C., for answer to Plaintiffs' Complaint state as follows:

I. INTRODUCTION

1. Answering Paragraph 1, the averments in Paragraph 1

do not constitute statements of fact upon which the pleader relies in stating his cause of action, but are rather statements of the nature of relief demanded by Plaintiffs which Defendants can make no factual reply under the applicable rules of pleading, but nevertheless, Defendants deny any and all of the allegations contained in Paragraph 1, and will further move the Court, pursuant to General Court Rules 1963, 115.2, to strike all of Plaintiff's Paragraph 1 based on its nonconformity with the applicable Michigan General Court Rules.

2. Answering Paragraph 2, Defendants deny each and every allegation contained in Paragraph 2 for the reason that said allegations, as far as they are factual allegations, are untrue and specifically represents to this Court that Defendants have never attempted to use any entity as a blind instrumentality or a vice to avoid, evade or violate the law and its intent.

## II. JURISDICTION

3. Answering Paragraph 3, Defendants deny that Plaintiffs have properly invoked jurisdiction of the Circuit Court for the County of Wayne.

## III. PARTIES

4. Answering Paragraph 4, Defendants admit that Frank Kelley is the Attorney General of the State of Michigan, but neither admit nor deny the further factual allegations contained in Paragraph 4.

5. Answering Paragraph 5, Defendants admit the allegations contained therein.

6. Answering Paragraph 6, Defendants admit the allegations contained therein.

7. Answering Paragraph 7, Defendants admit the allegations contained therein.

8. Answering Paragraph 8, Defendants admit the allegations contained therein.

9. Answering Paragraph 8, Defendants admit the allegations contained therein.

10. Answering Paragraph 10, Defendants admit the allegations contained therein.

11. Answering Paragraph 11, Defendants admit the allegations contained therein.

12. Answering Paragraph 12, Defendants admit the allegations contained therein.

13. Answering Paragraph 13, Defendants admit the allegations contained therein.

14. Answering Paragraph 14, Defendants admit the allegations contained therein.

15. Answering Paragraph 15, Defendants admit the allegations contained therein.

16. Answering Paragraph 16, Defendants neither admit nor deny the allegations therein and affirmatively allege by way of answer that Defendants state the document speaks for itself.

17. Answering Paragraph 17, Defendants neither admit nor deny the allegations therein and affirmatively allege by way of answer that Defendants state the document speaks for itself.

18. Answering Paragraph 18, Defendants neither admit nor deny the allegations therein and affirmatively allege by way of answer that Defendants state the document speaks for itself. By way of further answer, Defendants admit that the certified public accounting firm of Jenkins, Eshman and Magnus have from time to time served as accountants for Defendants Nolwood, M.S.&N. and Chemical Recovery.

19. Answering Paragraph 19, Defendants neither admit nor deny the allegations therein and affirmatively allege by way of answer that Defendants state the document speaks for itself.

20. Answering Paragraph 20, Defendants admit that Peter Shagena was connected with Nolwood Chemical Corporation, Chemical Recovery Systems, and M.S. & N. Corporation at the relevant times alleged therein. Further, Defendants admit that the property is the location of Defendant, Chemical Recovery Systems, Inc.'s operations.

21. Answering Paragraph 21, Defendants neither admit nor deny the allegations therein and affirmatively allege by way of answer that Defendants state the document speaks for itself.

22. Answering Paragraph 22, Defendants neither admit nor deny the allegations therein and affirmatively allege by way of answer that Defendants state the document speaks for itself.

23. Answering Paragraph 23, Defendants neither admit nor deny the allegations therein and affirmatively allege by way of answer that Defendants state the document speaks for itself.

24. Answering Paragraph 24, Defendants neither admit nor deny the allegations therein and affirmatively allege by way of answer that Defendants state the document speaks for itself.

25. Answering Paragraph 25, Defendants neither admit

nor deny the allegations therein, and affirmatively allege by way of answer that Defendants state the document speaks for itself.

26. Answering Paragraph 26, Defendants neither admit nor deny the allegations therein, and affirmatively allege by way of answer that Defendants state the document speaks for itself.

27. Answering Paragraph 27, Defendants neither admit nor deny the allegations therein, and affirmatively allege by way of answer that Defendants state the document speaks for itself.

28. Answering Paragraph 28, Defendants neither admit nor deny the allegations therein, and affirmatively allege by way of answer that Defendants state the document speaks for itself.

29. Answering Paragraph 29, Defendants neither admit nor deny the allegations therein, and affirmatively allege by way of answer that Defendants state the document speaks for itself.

30. Answering Paragraph 30, Defendants neither admit nor deny the allegations therein, and affirmatively allege by way of answer that Defendants state the document speaks for itself.

#### IV. FACTS

##### A. Defendants' Operations and Contamination of the Environment

31. Answering Paragraph 31, Defendants deny that they "jointly and severally" incorporated Chemical Recovery Systems, Inc. for any purpose whatsoever, for the reason that said allegation is untrue. By way of further answer to Paragraph 31, Defendants admit that Chemical Recovery Systems, Inc. was originally incorporated to engage in the process of chemical waste, but deny factually that process wastes or its by-products were to be stored on the property.

32. Answering Paragraph 32, Defendants neither admit nor deny the allegations contained therein and state that it lacks sufficient information to form a belief as to the truth of the allegation that Plaintiffs allege because of its inability to locate said correspondence. By way of further answer, Defendants affirmatively allege that Defendants state the letter speaks for itself.

33. Answering Paragraph 33, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegation that samples were collected and leave Plaintiffs to its strict proofs.

34. Answering Paragraph 34, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein and leave Plaintiffs to its strict proofs.

35. Answering Paragraph 35, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein and leave Plaintiffs to its strict proofs.

36. Answering Paragraph 36, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein and leave Plaintiffs to its strict proofs.

37. Answering Paragraph 37, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein and leave Plaintiffs to its strict proofs.

38. Answering Paragraph 38, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein and leave Plaintiffs to its strict proofs.

39. Answering Paragraph 39, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein and leave Plaintiffs to its strict proofs.

40. Answering Paragraph 40, Defendants admit that Dichlorethane, Dichloromethane, Perchloroethylene, Trichloroethane, Trichloroethylene, and Vinyl Chloride belong to a group of chemicals commonly referred to as aliphatic chlorinated hydrocarbons. By way of further answer to Paragraph 40, Defendants state and allege that the chemicals referred to have characteristics, properties and toxicity different from each other, and for this reason, it is inaccurate and misleading to attempt to compare the characteristics of the same.

41. Answering Paragraph 41, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

42. Answering Paragraph 42, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

43. Answering Paragraph 43, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

44. Answering Paragraph 44, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related

to the subject matter of the lawsuit.

45. Answering Paragraph 45, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

46. Answering Paragraph 46, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

47. Answering Paragraph 47, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

48. Answering Paragraph 48, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein for the reason that Plaintiffs did not identify the samples, nor the method of acquiring said samples, and leave Plaintiffs to its strict proofs.

49. Answering Paragraph 49, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.



50. Answering Paragraph 50, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

51. Answering Paragraph 51, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

52. Answering Paragraph 52, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

53. Answering Paragraph 53, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

54. Answering Paragraph 54, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants allege that the allegations concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

55. Answering Paragraph 55, Defendants neither admit nor deny the allegations contained therein, and leave Plaintiffs to its strict proofs.

56. Answering Paragraph 56, Defendants neither admit nor deny the allegations contained therein, and leave Plaintiffs to its strict proofs.

B. Chronology of Events, 1967 to the Present

57. Answering Paragraph 57, Defendants neither admit nor deny the allegations contained therein, and leave Plaintiffs to its strict proofs.

58. Answering Paragraph 58, Defendants admit that the Water Resources Commission made certain directives to Cam Chem Company, but neither admit nor deny the allegations concerning the contents of Order of Determination No. 1212, stating that it lacks sufficient information to form a belief as to the truth thereof, affirmatively stating that the Order of Determination speaks for itself as to its contents. By way of further answer, Defendants admit that the Water Resources Commission, and in fact all Plaintiffs, had a direct relationship with Cam Chem Company.

59. Answering Paragraph 59, Defendants admit that the Water Resources Commission made certain directives to Cam Chem Company, but neither admit nor deny the allegations concerning the contents of Order of Determination No. 1212, stating that it lacks sufficient information to form a belief as to the truth thereof, affirmatively stating that the Order of Determination speaks for itself as to its contents. By way of further answer, Defendants admit that the Water Resources Commission, and in fact all Plaintiffs, had a direct relationship with Cam Chem Company.

60. Answering Paragraph 60, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein and the contents of the correspondence referred to. By way of further answer, Defendants allege that the letter speaks for itself and its contents, but affirmatively allege to this Court that all Plaintiffs worked with Mr. Frederick Campbell and Cam Chem Company.

61. Answering Paragraph 61, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein and leaves Plaintiffs to its strict proofs.

62. Answering Paragraph 62, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegations therein, and leaves Plaintiffs to its strict proofs. By way of further answer thereto, Defendants state and allege that the correspondence referred to therein speaks for itself.

63. Answering Paragraph 63, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegation concerning a "WRC Memorandum" and leaves Plaintiffs to its strict proofs.

64. Answering Paragraph 64, Defendants admit that Cam Chem Company conveyed property to Defendant, Nolwood Chemical Corporation, and neither admit nor deny the remaining allegations therein, and leave Plaintiffs to its strict proofs.

65. Answering Paragraph 65, Defendants admit that Chemical Recovery Systems, Inc. was incorporated on or about December 1, 1971, and commenced operations within a short period thereafter at 36345 Van Born Road, Wayne (now Romulus), Michigan.

66. Answering Paragraph 66, Defendants admit that on or about May 8, 1972, Nolwood conveyed property to M.S. & N. Corporation.

67. Answering Paragraph 67, Defendants admit the allegations as to locations of certain businesses, and neither admit nor deny the allegations concerning what documents contained, and state & allege that said documents speak for themselves.

68. Answering Paragraph 68, Defendants, for lack of sufficient information to form a belief as to the truth of the allegations therein, neither admit nor deny same, and leave Plaintiffs to its strict proofs.

69. Answering Paragraph 69, Defendants admit that Chemical Recovery Systems was formed, with Defendant Shagena as its President, and that it was formed by Defendants Lawrence, McWood and Shagena. Defendants further admit that Chemical Recovery Systems, Inc. commenced operations on or about December 1971 on the Rolumus property. Defendants further deny the allegations of fact contained in Paragraph 69.

70. Answering Paragraph 70, Defendants deny the allegations therein for the reason that said allegations are untrue and without factual basis.

71. Answering Paragraph 71, Defendants deny the allegations of fact therein for the reason that said allegations are untrue and not factual.

72. Answering Paragraph 72, Defendants admit that correspondence was sent by the DNR to Defendant Shagena in March of 1973, but deny any implication that said correspondence contained factual statements or statements acceptable to Defendants. By way of further answer, Defendants state & allege that Defendant Shagena was in constant contact with the DNR and that the DNR and Shagena agreed that the contents of said letter were not factual.

73. Answering Paragraph 73, Defendants, for lack of

sufficient information to form a belief as to the truth of the allegations therein, neither admit nor deny the same, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants firmly allege that if in fact oil spills did occur from said property, it was the responsibility of the Plaintiffs, particularly the DNR, who specifically approved the "lagoons" in question constructed by Cam Chem Company with the specific approval of the Department of Natural Resources.

74. Answering Paragraph 74, Defendants neither admit nor deny the allegations therein and <sup>leave</sup> Plaintiffs to its strict proofs. By way of further answer, Defendants state & allege that if oil was seeping into the Trouton Drain, it was the sole responsibility of the Department of Natural Resources who had previously approved and directed the construction of lagoons on prior owner, Cam Chem, property. In addition, Defendants deny that Defendant Shagena was at this time "not cooperative" or at any time has been "not cooperative" during his long history of attempts at cooperation with the DNR. Further, if the lagoons were constructed of sand or improperly constructed, this was the responsibility of the DNR and not Defendants. Defendants admit that Defendant Shagena had complained to Romulus Township about the lagoons, but specifically deny that Defendant Shagena ever "dewatered a lagoon creating sufficient flow for the oil to move across the ground and directly into the Drain."

75. Answering Paragraph 75, Defendants, for lack of sufficient information, neither admit nor deny the allegations therein, and leave Plaintiffs to its strict proofs.

76. Answering Paragraph 76, Defendants, for lack of sufficient information, neither admit nor deny the allegations therein, and leave Plaintiffs to its strict proofs.

77. Answering Paragraph 77, Defendants, for lack of sufficient information, neither admit nor deny the allegations therein, and leave Plaintiffs to its strict proofs.

78. Answering Paragraph 78, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegation that a WRC Facilities Inspection Report contained the allegations therein, and leaves Plaintiffs to its strict proofs. By way of further answer, Defendants specifically deny the factual allegations within said report based on their own information and inspection.

79. Answering Paragraph 79, Defendants state that it lacks sufficient information to form a belief as to the truth of the allegation therein and leave Plaintiffs to its strict proofs.

80. Answering Paragraph 80, Defendants state that it lacks sufficient information to form a belief as to the contents of a WRC Inspection Report, but by way of further answer, specifically deny the allegation contained in said report.

81. Answering Paragraph 81, Defendants state that it lacks sufficient information to form a belief as to the contents of a WRC Inspection Report, but by way of further answer, specifically deny the allegation contained in said report.

82. Answering Paragraph 82, Defendants deny the allegations therein.

83. Answering Paragraph 83, Defendants, for lack of sufficient information, neither admit nor deny the allegations therein, and leave Plaintiffs to its strict proofs.

84. Answering Paragraph 84, Defendants, for lack of sufficient information, neither admit nor deny the allegations therein, and leave Plaintiffs to its strict proofs.

85. Answering Paragraph 85, Defendants deny that they became subject to the provisions of WRC Order No. 1212, but admit that Defendant, Mr. Shagena, attended a hearing on June 27, 1974 at Sault Ste. Marie, Michigan.

86. Answering Paragraph 85, Defendants admit that a WRC Order was issued, but neither admit nor deny the contents of said Order, and leave Plaintiffs to its strict proofs. By way of further answer, Defendants state that said Order speaks for itself.

87. Answering Paragraph 87, Defendants admit that an Order was issued, but neither admit nor deny the allegation of the contents of the Order, and further state that the Order speaks for itself.

88. Answering Paragraph 88, Defendants deny any failure to comply with any Orders issued by the WRC. By way of further answer, Defendants state & allege that from 1973 until the present, Defendants and Plaintiffs had continuous contact each with the other. That within a short period of time after receiving the above-referenced document, Plaintiffs and Defendants discussed the same and modified the same.

89. Answering Paragraph 89, Defendants deny the allegations therein.

90. Answering Paragraph 90, Defendants deny the allegations therein.

91. Answering Paragraph 91, Defendants deny the allegations therein.

92. Answering Paragraph 92, Defendants deny any failure to comply with any Orders issued by the WRC. By way of further answer, Defendants state & allege that from 1973 until the present, Defendants and Plaintiffs had continuous contact each with the other. That within a short period of time after receiving the

above-referenced document, Plaintiffs and Defendants discussed the same and modified the same.

93. Answering Paragraph 93, Defendants neither admit nor deny the allegations contained therein for lack of sufficient information upon which to form a belief thereto, leave Plaintiffs to its strict proofs.

94. Answering Paragraph 94, Defendants, for lack of sufficient information, neither admit nor deny the allegations therein, and leave Plaintiffs to its strict proofs. Defendants deny the factual statements contained in WRC Order No. 1739. By way of further answer, Defendants state that from 1973 until the present, both Defendants and Plaintiffs each to the other have entered into a number of agreements concerning the facts and allegations contained in the WRC Staff Report referred to in Paragraph 94.

95. Answering Paragraph 95, Defendants admit receiving correspondence referred to and that the correspondence included the quoted material. By way of further answer, Defendants affirmatively state that this letter is good testament to the fact that the WRC and the DNR and Defendants continuously, since 1973 until the present, entered into agreements, amendments to agreements, amendments to amendments to agreements, amendments to amendments to amendments to agreements, amendments to amendments to amendments to amendments to amendments to agreements, ad infinitum.

96. Answering Paragraph 96, Defendants admit that the report was prepared by Keck Consulting Services, Inc. of East Lansing, with the approval of the Plaintiffs. Defendants further admit that the investigation included the quoted statement in Paragraph 96, quoted in part, from said investigation. By way of further answer, Defendants state that the summary quoted by



the Plaintiffs further provided as follows: "Thus in order to prevent contaminated groundwater from entering the Troutman (sic) Drain, some type of collection system should be installed."

97. Answering Paragraph 97, Defendants admit that a WRC Permit No. 1739 was issued, admit that a number of meetings and exchanges of letters took place, deny that any "additional delays" took place due to Defendants' negligence or uncooperativeness, and by way of further answer, neither admit nor deny any additional allegations therein and leave Plaintiffs to its strict proofs.

98. Answering Paragraph 98, Defendants admit a Permit No. 1739 was issued, but neither admit nor deny the contents thereof for the reason that said permit speaks for itself. By way of further answer, Defendants state that the WRC amended its Permit No. 1739 on numerous occasions since 1976 and, in fact, had agreed upon the prevention program the Defendants had installed and followed.

99. Answering Paragraph 99, Defendants, for lack of sufficient information to form a belief as to the truth of the allegations therein, neither admit nor deny the same, but leave Plaintiffs to its strict proofs.

100. Answering Paragraph 100, Defendants, for lack of sufficient information to form a belief as to the truth of the allegations therein, neither admit nor deny the same, but leave Plaintiffs to its strict proofs.

101. Answering Paragraph 101, Defendants, for lack of sufficient information to form a belief as to the truth of the allegations therein, neither admit nor deny the same, but leave Plaintiffs to its strict proofs.

102. Answering Paragraph 102, Defendants, for lack of sufficient information to form a belief as to the truth of the

allegations therein, neither admit nor deny the same, but leave Plaintiffs to its strict proofs.

103. Answering Paragraph 103, Defendants, for lack of sufficient information to form a belief as to the truth of the allegations therein, neither admit nor deny the same, but leave Plaintiffs to its strict proofs.

104. Answering Paragraph 104, Defendants, for lack of sufficient information to form a belief as to the truth of the allegations therein, neither admit nor deny the same, but leave Plaintiffs to its strict proofs.

105. Answering Paragraph 105, Defendants, for lack of sufficient information to form a belief as to the truth of the allegations therein, neither admit nor deny the same, but leave Plaintiffs to its strict proofs.

106. Answering Paragraph 106, admit that Defendant Shagena wrote a letter to the DNR encompassing his understanding of their previously amended and reamended agreements. Defendants deny that they were "minimal proposals" but that they were "maximum proposals" and had the clear understanding from the Department of Natural Resources that they were "acceptable proposals" and represented the understanding of all parties thereto.

107. Answering Paragraph 107, Defendants admit that a report was filed with the DNR; Defendants deny further allegations contained therein.

108. Answering Paragraph 108, Defendants, for lack of sufficient information to form a belief as to the truth thereof, neither admit nor deny the same, and leave Plaintiffs to its strict proofs.

109. Answering Paragraph 109, Defendants, for lack of

sufficient information to form a belief as to the truth thereof, neither admit nor deny the same, and leave Plaintiffs to its strict proofs.

110. Answering Paragraph 110, Defendants admit receiving correspondence from the DNR but neither admit nor deny the allegations concerning the content of said correspondence, and affirmatively allege that the letter speaks for itself. Defendants deny any further allegations contained therein.

111. Answering Paragraph 111, Defendants, for lack of sufficient information, neither admit nor deny the allegations therein, and leave Plaintiffs to its strict proofs.

112. Answering Paragraph 112, Defendants, for lack of sufficient information, neither admit nor deny the allegations therein, and leave Plaintiffs to its strict proofs.

113. Answering Paragraph 113, Defendants specifically deny the factual basis of the allegations supposedly reported by OHM.

114. Answering Paragraph 114, Defendants, for lack of sufficient information, neither admit nor deny the allegations therein, and leave Plaintiffs to its strict proofs.

115. Answering Paragraph 115, Defendants admit the correspondence and the quotation in part therefrom, but deny the further allegations contained in Paragraph 115.

116. Answering Paragraph 116, Defendants admit the contents of the correspondence, but deny the further allegations contained therein.

117. Answering Paragraph 117, Defendants deny the allegations therein, and affirmatively state that they were under

the impression on numerous occasions since 1973 that an agreement had been reached and that it was "legally binding", notwithstanding the Plaintiffs' numerous ex parte alterations to their previously agreed upon settlements of this matter.

V. VIOLATIONS OF LAW

COUNT I

Water Resources Commission Act - Violation of Permit

118. Answers to Paragraphs 1-117 of this Complaint are incorporated by reference.

119. Answering Paragraph 119, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

120. Answering Paragraph 120, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

121. Answering Paragraph 121, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

122. Answering Paragraph 122, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper

pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

123. Answering Paragraph 123, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

124. Answering Paragraph 124, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

125. Answering Paragraph 125, Defendants deny the allegations contained therein for the reason that said allegations are false and without factual basis.

## COUNT II

### Water Resources Commission Act - Unlawful Discharge

126. Answers to Paragraphs 1-125 of this Complaint are incorporated by reference.

127. Answering Paragraph 127, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

128. Answering Paragraph 128, Defendants deny the allegations contained therein for the reason that said factual allegations are untrue and without factual basis.

### COUNT III

#### Water Resources Commission Act - Statutory Nuisance

129. Answers to Paragraph 1-128 of this Complaint are incorporated by reference.

130. Denied.

131. Answering Paragraph 131, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

132. Answering Paragraph 132, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

133. Answering Paragraph 133, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

### COUNT IV

#### Environmental Protection Act

134. Answers to Paragraph 1-133 of this Complaint are incorporated by reference.

135. Answering Paragraph 135, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to CCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

136. Answering Paragraph 136, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

137. Answering Paragraph 137, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

138. Answering Paragraph 138, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

139. Answering Paragraph 139, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

140. Answering Paragraph 140, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

141. Answering Paragraph 141, Defendants deny the allegations contained therein for the reason that said allegations are untrue and without factual basis.

142. Answering Paragraph 142, Defendants deny the

allegations contained therein for the reason that said allegations are untrue and without factual basis.

143. Answering Paragraph 143, Defendants deny the jurisdictional ability or factual need for any pretrial bond; and by way of further answer, the allegations of Paragraph 143 constitutes legal conclusions to which Defendants can make no further factual reply under the applicable rules of pleadings.

#### COUNT V

##### Common Law Nuisance

144. Answers to Paragraphs 1-143 of this Complaint are incorporated by reference.

145. Answering Paragraph 143, Defendants deny the allegations contained therein for the reason that said allegations are untrue and without factual basis.

#### COUNT VI

##### Violation of the Public Trust

146. Answers to Paragraphs 1-145 of this Complaint are incorporated by reference.

147. Answering Paragraph 147, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

148. Answering Paragraph 148, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move



that it be stricken pursuant to GCR 1963, 115.2.

149. Answering Paragraph 149, Defendants state that the allegations of Paragraph 149 constitute legal conclusions to which Defendants can make no factual reply under the applicable rules of pleadings, but that Plaintiffs have jurisdiction over the Trouton Drain and/or the Ecorse Creek.

150. Answering Paragraph 150, Defendants state that the allegations of Paragraph 150 constitute legal conclusions to which Defendants can make no factual reply under the applicable rules of pleadings.

151. Answering Paragraph 151, Defendants state that the allegations of Paragraph 151 constitute legal conclusions to which Defendants can make no factual reply under the applicable rules of pleadings.

152. Answering Paragraph 152, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

#### COUNT VII

##### Unjust Enrichment

153. Answers to Paragraphs 1-152 of this Complaint are incorporated by reference.

154. Answering Paragraph 154, Defendants state that this is a conclusion and state of law and, therefore, requires no answer; further, Defendants state that said Paragraph is improper pleading according to GCR 1963, 111.1. Therefore, Defendants move that it be stricken pursuant to GCR 1963, 115.2.

155. Answering Paragraph 155, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

#### RELIEF REQUESTED

WHEREFORE, Defendants respectfully pray that this Honorable Court grant a judgment for no cause of action in its favor and against Plaintiffs and for costs and fees incurred herein.

Further, Defendants pray that this Honorable Court grant the relief requested in its Third Party Complaints, and its Counter-Complaint against the State of Michigan, et al.

#### AFFIRMATIVE DEFENSES

1. That the Plaintiffs are estopped from proceeding in the above-entitled action because of their past action and/or inaction and based on the fact that they were fully informed of the actions of the Defendants and are substantially responsible for the creation of any contamination which may have existed or may exist.

2. That the Plaintiffs are barred from bringing this action because of their own contributory-comparative negligence.

3. That by the actions of the Plaintiffs jointly and severally since Defendants purchased the property, and their suggestions and enforcement of applicable regulations, they have, in essence, created a license for Defendant's actions.

4. That the claims are barred by Defendants Shagena's and Holton's pending discharge of bankruptcy.

5. That the promulgated rules and regulations under

which the Plaintiffs proceed were invalid since they were not promulgated in accordance with the Administrative Procedures Act, MSA §3.560(101) et seq.

6. That the Plaintiffs are not entitled to proceed with the action, both legal and equitable, since they have not yet exhausted their administrative remedies.

7. That the above-entitled actions are barred by the doctrine of laches and the applicable statute of limitations.

8. That the Plaintiffs themselves violated the "Public Trust" and, therefore, are barred from bringing this action and requesting equitable relief as the absence of "clean hands."

9. That the Plaintiffs have misjoined and nonjoined all necessary parties for complete relief and adjudication and for the convenient administration of justice.

10. Defendants, M. S. & N. Corporation, Nolwood Chemical Corporation, A. H. Magnus, Jr., Arthur B. McWood, Jr., and Charles H. Nolton, have been given no notice of any problems with the site by Plaintiffs, nor that Plaintiffs were going to look to them for any relief or responsibility.

11. As to Defendants M. S. & N. Corporation, Nolwood Chemical Corporation, A. H. Magnus, Jr., Arthur B. McWood, Jr., Charles H. Nolton and Peter J. Shagena, Plaintiffs failed to state a cause of action and plead applicable counts representing liability, and the only proper party under Plaintiff's Complaint is Chemical Recovery Systems, Inc., a Michigan corporation.

12. That the Defendants reserve the right to make further affirmative defenses.

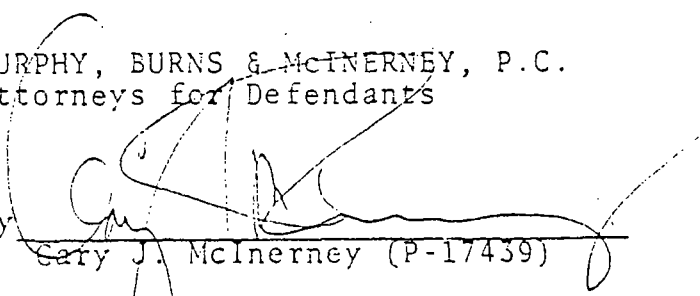
FURTHER RELIEF REQUESTED

WHEREFORE, Defendants respectfully pray that this Court grant the following relief:

1. Plaintiffs' Complaint be dismissed.
2. A Judgment be issued for damages for whatever amount Defendants are found to be entitled.
3. A mandatory permanent injunction be issued which requires, inter alia
  - A. That Plaintiffs remove all contaminated materials, soils and sediments if any in and around Defendant's plant that were contaminated by Co-Defendants' acts and omissions;
  - B. That Plaintiffs do all things necessary to restore Defendant's plant area to its natural condition;
  - C. That Plaintiffs perform all acts sought by Plaintiffs to be performed by Defendants in Plaintiffs' Complaint.
4. That Plaintiffs reimburse Defendants for all costs of this action, including attorneys fees.
5. That Defendants be permitted to continue proceeding with all other matters still to be resolved in the above-entitled action.
6. That Defendants be awarded such other and further relief as the Court deems just and proper.

DATED: October 9, 1979

MURPHY, BURNS & MCINERNEY, P.C.  
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By   
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